

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NO. FCU-02-10 (C-02-148)
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**ORDER DOCKETING COMPLAINT AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued August 19, 2002)

On May 23, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to 199 IAC 6.5, asking that the Board review the proposed resolution issued in C-02-148, involving AT&T Communications of the Midwest, Inc. (AT&T), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a" (2002). Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this formal complaint proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 12, 2002, Board staff received a written complaint from Jo Ann Baker stating that her long distance service had been changed from Verizon to AT&T without her consent; that is, alleging her long distance service had been slammed. The matter was identified as C-02-148.

On April 16, 2002, Board staff forwarded the letter to AT&T for response within ten days.

On May 2, 2002, AT&T responded, stating that it did not slam the customer and providing a recording of a third-party verification authorizing the change in service. AT&T further stated that a telemarketer called the Baker residence on February 20, 2002; an order was processed; the transaction was verified; and AT&T service was connected on March 4, 2002. AT&T service was then terminated on March 23, 2002.

The recording provided by AT&T indicated that the contact party at the Baker residence was a person the Board will identify as SF¹, who gave her birth date as October 19th for purposes of subsequent identification. On the recording, SF answers in the affirmative when asked if she is authorized to make changes in the telecommunications service for that account.

On May 6, 2002, Board staff contacted the customer, who stated that SF is her granddaughter and is not authorized to make changes in the service.

¹ It is alleged that SF is a minor, so the Board will refer to her only by her initials.

On May 9, 2002, Board staff issued a proposed resolution concluding that AT&T had not slammed the account and suggesting the customer may wish to consider adding a preferred interexchange carrier (PIC) freeze to her account to prevent similar occurrences in the future. The proposed resolution informed the parties that they had 14 days to appeal the proposed resolution or it would become the final resolution.

On May 23, 2002, Consumer Advocate filed its request for formal complaint proceedings asking the Board to consider the propriety of imposing a civil penalty pursuant to Iowa Code § 476.103(4)"a" and to consider the factors identified in § 476.103(4)"b" as a possible basis for compromising a civil penalty, if one is imposed. Consumer Advocate alleges that SF is a minor, with a birth date of December 23, 1989; as such, Consumer Advocate argues that any contract that may have been created by SF's authorization is subject to disaffirmance, pursuant to Iowa Code § 599.2. Consumer Advocate also alleges that SF denies the voice on the recording is hers; her mother agrees; and notes the discrepancy in the birth date. Based on these additional facts, Consumer Advocate argues that AT&T's response to date is inadequate and does not provide a reasonable basis for concluding that the customer's authorization for the change in service was obtained.

Board staff forwarded copies of the Consumer Advocate's request to Ms. Baker and AT&T on May 24, 2002. As of the date of this order, AT&T has not filed any response; however, Ms. Baker filed a letter stating that the voice on the recording is not SF's voice.

Based on the circumstances described above and Consumer Advocate's request, the Board will docket this matter as a formal complaint proceeding, pursuant to Iowa Code §§ 476.3 and 476.103, identified as Docket No. FCU-02-10, and assign it to an administrative law judge for further proceedings.

IT IS THEREFORE ORDERED:

1. The "Request For Formal Proceeding" filed on May 23, 2002, by the Consumer Advocate Division of the Department of Justice is granted, pursuant to Iowa Code §§ 476.3 and 476.102 (2002). The informal complaint proceedings identified as C-02-148 are docketed for formal proceedings identified as Docket No. FCU-02-10.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), this matter is assigned to Administrative Law Judge Amy Christensen for such further proceedings as may be appropriate.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 19th day of August, 2002.